

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BRENT MORRIS,

Petitioner,

Case No. 3:14-cv-00444-LRH-(WGC)

V.

RENEE BAKER and NEVADA ATTORNEY
GENERAL,

Respondents.

Petitioner, an inmate in the custody of the Nevada Department of Corrections (NDOC), has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 to challenge his forfeiture of 90 days of good-time credit. ECF No. 2. The State filed an Answer. ECF No. 11. Morris filed a Reply. ECF No. 31. For the reasons below, the court shall deny Morris' petition for a writ of habeas corpus, dismiss this action with prejudice, and deny a certificate of appealability.

I. Background

20 On July 9, 2013, Morris was notified that he was being charged in a prison disciplinary
21 proceeding with the unauthorized use of equipment or mail and charging fees for legal services. ECF
22 No. 12-12. On July 21, 2013, a disciplinary hearing officer found Morris guilty of both, and
23 recommended that he forfeit 90 days of good-time credits. ECF No 12-14. That recommendation was
24 accepted by the NDOC. ECF No. 12-15.

25 On November 8, 2013, Morris filed a pro se habeas petition in state court challenging the
26 forfeiture of good-time credit. ECF No. 12-2. The state court denied his petition on December 19,
27 2013. ECF No. 13-1. When Morris appealed, the Supreme Court of Nevada affirmed. ECF No. 13-
28 17.

1 Morris filed a petition for a writ of habeas corpus in federal court on May 29, 2015. ECF
2 No.2. The State filed an Answer. ECF No. 11. Morris filed a Reply. ECF No. 31.

3 **II. Federal Habeas Review Standards**

4 When a state court has adjudicated a claim on the merits, the Antiterrorism and Effective
5 Death Penalty Act (AEDPA) imposes a “highly deferential” standard for evaluating the state court
6 ruling; that standard is “difficult to meet” and “demands that state-court decisions be given the
7 benefit of the doubt.” *Cullen v. Pinholster*, 563 U.S. 170 (2011). Under this highly deferential
8 standard of review, a federal court may not grant habeas relief merely because it might conclude that
9 the state court decision was incorrect. *Id.* at 202. Instead, under 28 U.S.C. § 2254(d), the court may
10 grant relief only if the state court decision: (1) was either contrary to or involved an unreasonable
11 application of clearly established law as determined by the United States Supreme Court or (2) was
12 based on an unreasonable determination of the facts in light of the evidence presented at the state
13 court proceeding. *Id.* at 181–88. The petitioner bears the burden of proof. *Id.* at 181.

14 A state court decision is “contrary to” law clearly established by the Supreme Court only if it
15 applies a rule that contradicts the governing law set forth in Supreme Court case law or if the
16 decision confronts a set of facts that are materially indistinguishable from a Supreme Court decision
17 and nevertheless arrives at a different result. *See, e.g., Mitchell v. Esparza*, 540 U.S. 12, 15–16
18 (2003). A state court decision is not contrary to established federal law merely because it does not
19 cite the Supreme Court’s opinions. *Id.* The Supreme Court has held that a state court need not even
20 be aware of its precedents, so long as neither the reasoning nor the result of its decision contradicts
21 them. *Id.* And “a federal court may not overrule a state court for simply holding a view different
22 from its own, when the precedent from [the Supreme] Court is, at best, ambiguous.” *Id.* at 16. A
23 decision that does not conflict with the reasoning or holdings of Supreme Court precedent is not
24 contrary to clearly established federal law.

25 A state court decision constitutes an “unreasonable application” of clearly established federal
26 law only if it is demonstrated that the state court’s application of Supreme Court precedent to the
27 facts of the case was not only incorrect but “objectively unreasonable.” *See, e.g., id.* at 18; *Davis v.*
28 *Woodford*, 384 F.3d 628, 638 (9th Cir. 2004). When a state court’s factual findings based on the

1 record before it are challenged, the “unreasonable determination of fact” clause of 28 U.S.C.
2 § 2254(d)(2) controls, which requires federal courts to be “particularly deferential” to state court
3 factual determinations. *See, e.g., Lambert v. Blodgett*, 393 F.3d 943, 972 (9th Cir. 2004). This
4 standard is not satisfied by a mere showing that the state court finding was “clearly erroneous.” *Id.* at
5 973. Rather, as the Ninth Circuit explained, AEDPA requires substantially more deference:

6 [I]n concluding that a state-court finding is unsupported by substantial evidence in the
7 state-court record, it is not enough that we would reverse in similar circumstances if
8 this were an appeal from a district court decision. Rather, we must be convinced that
an appellate panel, applying the normal standards of appellate review, could not
reasonably conclude that the finding is supported by the record.

9 *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004); *see also Lambert*, 393 F.3d at 972.

10 Under 28 U.S.C. § 2254(e)(1), a state court’s factual findings are presumed to be correct and
11 the petitioner must rebut that presumption by “clear and convincing evidence.” In this inquiry,
12 federal courts may not look to any factual basis not developed before the state court unless the
13 petitioner shows that the claim relies on either (a) “a new rule of constitutional law, made retroactive
14 to cases on collateral review by the Supreme Court, that was previously unavailable” or (b) “a factual
15 predicate that could not have been previously discovered through the exercise of due diligence,” and
16 also shows that “the facts underlying the claim would be sufficient to establish by clear and
17 convincing evidence that but for constitutional error, no reasonable factfinder would have found the
18 applicant guilty of the underlying offense.” 28 U.S.C. § 2254(e)(2).

19 When a state court summarily rejects a claim, it is the petitioner’s burden to show that “there
20 was no reasonable basis for the state court to deny relief.” *Harrington v. Richter*, 562 U.S. 86, 98
21 (2011).

22 III. Discussion

23 A. Ground 1

24 Morris argues that “his due process rights were violated when the NDOC failed to timely
25 serve him with the notice of charges.” ECF No. 2 at 3. Morris contends that, under NDOC
26 procedures, “the 10-day limit in which to file the [notice of charges] began to run on March 12,
27 2013, when the alleged incident had occurred.” ECF No. 2 at 6; *see* ECF No. 12-12. The Supreme
28 Court of Nevada rejected this claim because Morris “received advance written notice of the charges.”

1 ECF No. 13-17 at 2.

2 Indeed, that is all that is required by the U.S. Supreme Court. *See Superintendent v. Hill*, 472
3 U.S. 445, 454 (1985) (“Where a prison disciplinary hearing may result in the loss of good time
4 credits, . . . the inmate must receive: (1) advance written notice of the disciplinary charges; (2) an
5 opportunity, when consistent with institutional safety and correctional goals, to call witnesses and
6 present documentary evidence in his defense; and (3) a written statement by the factfinder of the
7 evidence relied on and the reasons for the disciplinary action.”). And the record establishes that
8 Morris received it. The notice of charges was served on Morris on July 9, 2013. ECF No. 12-12. The
9 hearing occurred on July 21, 2013—twelve days after Morris was notified of the charges. ECF
10 No.12-14.

11 Morris’ contention that waiting more than ten days to file a notice of charges violated NDOC
12 procedures is not only incorrect, it is irrelevant. The administrative regulations provide that “action
13 should be taken as soon after the conduct as is practicable”—and require only twenty-four-hours
14 notice. ECF No. 12-20 at 1–2. The NDOC waited until Morris returned to NDOC custody from New
15 Jersey to issue the notice of charges. He returned to his NDOC institution on June 13, 2013. ECF
16 No. 12-21. That seems “practicable.” But even if not, that is irrelevant. *See Estelle v. McGuire*, 502
17 U.S. 62, 67–68 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court
18 determinations on state-law questions.”). The only question is whether not filing a notice of charges
19 until after Morris returned to NDOC custody less than four months after the incident violated
20 Morris’ rights under the Due Process Clause. Morris points to no law supporting his position that it
21 does, and the court cannot find any either.

22 The Supreme Court of Nevada’s determination that Morris’ due process rights were not
23 violated by the timing of the filing of the notice of charges did not involve an unreasonable
24 determination of fact, nor was it contrary to, or an unreasonable application of, federal law clearly
25 established by the U.S. Supreme Court.

26 Ground 1 provides no basis for habeas relief.

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1 **B. Ground 2**

2 In Ground 2, Morris argues that his due process rights were violated because he was not in
3 NDOC custody on March 12, 2013—rather, he was in the custody of the state of New Jersey. ECF
4 No. 2 at 9. Morris contends that it violated due process for the NDOC to subject him to disciplinary
5 proceedings based on violations of NDOC rules when his conduct did not violate the rules of the jail
6 system of which he was in custody. *See id.* at 9–10. Citing *Wolff v. McDonnell*, 418 U.S. 539 (1974),
7 for the proposition that due process did not require a contrary conclusion, the Supreme Court of
8 Nevada summarily denied this claim. See ECF No. 13-17. Therefore, it is Morris’ burden to show
9 that “there was no reasonable basis for the state court to deny relief.” *Richter*, 562 U.S. at 98.

10 The Supreme Court of Nevada could have reasonably held that this did not violate the Due
11 Process Clause, as there is no decision of which this court is aware that holds that an inmate may not
12 be punished for failing to comply with his home-institution’s regulations when temporarily
13 transferred to another institution. Moreover, the application of punishment here is reasonable. Morris
14 was communicating with and charging for the legal work of prisoners in NDOC custody.
15 Furthermore, he was receiving good-time credits towards his Nevada prison sentence for the time he
16 was spending in New Jersey. He left for New Jersey on January 25, 2013, and returned to NDOC
17 custody on May 17, 2013. ECF No. 12-21. For that time, he earned good-time credits at the rate of
18 twenty days per month. ECF No. 12-25 at 7. Moreover, he was on notice from Nevada law that he
19 had to comply with NDOC regulations while in out-of-state custody to earn these credits. *See Nev.*
20 *Rev. Stat. §§ 178.620, 209.4465(1)*. What is more, though, is that the Supreme Court of Nevada’s
21 interpretation of Nevada’s good-time credit scheme is beyond this court’s purview on federal habeas
22 review. *See McGuire*, 502 U.S. at 67–68. At bottom, Morris does not point to, and this court cannot
23 think of, any reason why the application of this rule here would violate Morris’ due process rights,
24 let alone clearly do so.

25 The Supreme Court of Nevada’s determination that Morris’ due process rights were not
26 violated by being subject to discipline for violating NDOC regulations while temporarily in out-of-
27 state custody did not involve an unreasonable determination of fact, nor was it contrary to, or an
28 unreasonable application of, federal law clearly established by the U.S. Supreme Court.

1 Ground 2 provides no basis for habeas relief.

2 **C. Ground 3**

3 **1. Ground 3-1**

4 In Ground 3-1, Morris argues that his due process rights were violated “because there was no
5 evidence introduced at his disciplinary hearing to show that he engaged in unauthorized use of the
6 mail, or received fees for legal services.” ECF No. 2 at 12. The Supreme Court of Nevada rejected
7 this argument because it found “[s]ome evidence supports the decision.” ECF No. 13-17 at 2. Indeed,
8 for a revocation of good-time credits to pass constitutional muster, it need only be “supported by
9 some evidence in the record.” *Hill*, 472 U.S. at 454. It was here: a prison official provided a
10 summary of the relevant letters, and Morris essentially conceded all of the crucial factual elements
11 while pursuing his defenses as articulated above in Grounds 1 and 2. *See* ECF Nos. 12-12, 12-14.

12 The Supreme Court of Nevada’s holding that there was “some evidence” to support Morris’
13 conviction did not involve an unreasonable determination of fact, nor was it contrary to, or an
14 unreasonable application of, federal law clearly established by the U.S. Supreme Court.

15 Ground 3-1 provides no basis for habeas relief.

16 **2. Ground 3-2**

17 Morris also contends that he was denied due process because “he was precluded from
18 presenting a federal court document” that established that “inmates have a constitutional right to
19 provide legal assistance to other inmates.” ECF No. 2 at 12. Given that is not true, forbidding him
20 from introducing it at the evidentiary hearing could not have violated due process. Moreover, he was
21 not charged with simply providing legal assistance, he was charged with charging for providing legal
22 assistance. Because the Supreme Court of Nevada summarily rejected this claim, Morris bore the
23 burden of establishing that there was “no reasonable basis for the state court to deny relief.” *Richter*,
24 562 U.S. at 98; *see* ECF No. 13-17 at 2. This would have been a reasonable basis.

25 Ground 3-2 provides no basis for habeas relief.

26 **3. Ground 3-3**

27 Morris next contends that he was denied the right to view two letters, one from February
28 2013 and one from June 2013, that were used against him at his hearing. *See* ECF No. 2 at 13–14.

1 Morris fails to point to any clearly established rule that he be allowed to inspect all the
2 evidence that was used against him. In fact, the Supreme Court in *Wolff* stated that prisoners need
3 not have the ability to confront or cross-examine “those furnishing evidence against” them. 418 U.S.
4 at 567–68. And while the Court recognized that, in some cases, the penological interests and
5 concerns that mitigated against allowing confrontation and cross-examination might not be present
6 and therefore balance towards allowing it, “the better course . . . is to leave these matters to the
7 sound discretion of the officials of state prisons.” *Id.* at 569. Contrary to Morris’ argument, being
8 able to “present documentary evidence,” *id.* at 566, which *Wolff* granted prisoners a right to do, is
9 simply not the same thing as being able to read all documentary evidence.

10 In fact, the Seventh Circuit has come to a similar conclusion in a case when prison officials
11 refused to give the prisoner an exculpatory report: “It can be argued that there is no *Brady* analogy
12 because the fact-finder in this case, the Committee, was given the report and could consider it in
13 reaching its conclusion. After all, one of the aims of the *Brady* rule is to insure that the trier of fact
14 considers all relevant evidence in reaching a conclusion as to guilt or innocence.” *Chavis v. Rowe*,
15 643 F.2d 1281, 1286 (7th Cir. 1981). All that was clearly established is that Morris was entitled to “a
16 written statement by the factfinder of the evidence relied on and the reasons for the disciplinary
17 action.” *Hill*, 472 U.S. at 454. He received that. *See* ECF Nos. 12-12, 12-14.

18 While the denial of the letters might have violated due process on de novo review, the
19 Supreme Court of Nevada’s holding that presenting Morris with a written summary rather than the
20 physical documents themselves did not involve an unreasonable determination of fact, nor was it
21 contrary to, or an unreasonable application of, federal law clearly established by the U.S. Supreme
22 Court.

23 And even if the failure to provide these two letters violated clearly established law, a review
24 of the audio recording of the disciplinary hearing rebuffs Morris’ claim that he asked to view the
25 letters. *See* ECF No. 12-27. In fact, the letters were discussed, as were their contents, and Morris
26 provided no indication that he wanted any further information about them. Thus, his argument
27 independently fails because it is most assuredly not a violation of due process to not provide
28 documents that were not requested.

1 Ground 3-3 provides no basis for habeas relief.

2 **D. Ground 4**

3 In Ground 4, Morris argues that his due process rights were violated “when the hearing
4 officer refused his request to call witnesses in his defense.” ECF No. 2 at 17. The Supreme Court of
5 Nevada rejected this argument because “the hearing officer stipulated to the substance of the
6 testimony that would have been presented.” ECF No. 13-17 at 2 n.3. Indeed, Morris wanted to call
7 prison officials from New Jersey to testify that their prison regulations did not forbid what Morris
8 did—the hearing officer stipulated to that point. *See* ECF No. 12-14 at 1. He also wanted to call an
9 inmate’s father to testify that Morris never personally asked the father for money—the hearing
10 officer stipulated to this as well. *See id.* Beyond being stipulated to, both points were also not
11 relevant to whether he charged inmates for providing legal services or mailed letters in violation of
12 NDOC rules. Under *Wolff*, the right to call witnesses is qualified to exclude witnesses that are
13 irrelevant or aren’t necessary—here, they were both. *See Wolff*, 418 U.S. at 566–67.

14 Morris also contends in his federal petition that he was prevented from calling two other
15 inmates to testify. However, the record belies this assertion. Even though the hearing officer’s refusal
16 to call the New Jersey officials and an inmate’s father were noted in the summary of the disciplinary
17 hearing, there is no evidence that he asked to call anyone else. *See* ECF No. 12-14. Moreover, the
18 audio recording of the hearing does not support his assertion that he attempted to call these two other
19 inmates. *See* ECF No. 12-27. He was asked if he wanted to call any other witnesses, and he said that
20 he did not. That would have been a “reasonable basis for the state court to deny relief.” *Richter*, 562
21 U.S. at 98.

22 Therefore, the Supreme Court of Nevada’s holding that Morris was afforded his qualified
23 opportunity to call witnesses did not involve an unreasonable determination of fact, nor was it
24 contrary to, or an unreasonable application of, federal law clearly established by the U.S. Supreme
25 Court.

26 Ground 4 provides no basis for habeas relief.

27 **E. Ground 5**

28 In Ground 5, Morris argues that he was “denied a liberty interest and subjected to cruel and

1 unusual punishment as a result of the sanctions.” ECF No. 2 at 21. He claims that this is so because
2 “there was no evidence.” *Id.* The Supreme Court of Nevada summarily rejected this argument. ECF
3 No. 13-17 at 2–3. This argument fails for the same reasons that the insufficiency of the evidence
4 argument failed in Ground 3-1 and because there was nothing cruel or unusual about the ninety days
5 of lost good-time credit and ninety days of administrative segregation. *See Hutto v. Finney*, 437 U.S.
6 678, 686 (1978); *cf. Lockyer v. Andrade*, 538 U.S. 63, 72 (2003) (holding that the only clearly
7 established governing legal principle is that a “gross disproportionality” review applies to criminal
8 sentences for a term of years, but the precise contours of that principle are “unclear applicable only
9 in the ‘exceedingly rare’ and ‘extreme’ case”).

10 Therefore, the Supreme Court of Nevada’s holding that Morris was not subject to cruel and
11 unusual punishment nor convicted without any evidence did not involve an unreasonable
12 determination of fact, nor was it contrary to, or an unreasonable application of, federal law clearly
13 established by the U.S. Supreme Court.

14 Ground 5 provides no basis for habeas relief.

15 **IV. Conclusion**

16 IT IS THEREFORE ORDERED that Morris’ petition for a writ of habeas corpus (ECF No.
17 2) is **DENIED** on the merits, and this action is **DISMISSED** with prejudice.¹

18 Because reasonable jurists would not find this decision to be debatable or incorrect, IT IS
19 FURTHER ORDERED that a certificate of appealability is **DENIED**. The Clerk of Court is directed
20 to enter judgment, in favor of respondents and against Morris, dismissing this action with prejudice.

21 IT IS SO ORDERED.

22 DATED this 6th day of September, 2017.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

27 ¹ A petitioner may not use a reply to an answer to present additional claims and allegations that are not
28 included in the federal petition. *See, e.g., Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994).
To the extent that Morris has done so in his federal reply, the court does not consider these additional
claims and allegations.